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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,193	08/22/2003	Michael G. Fenlon	DRG-001	1035
21323 7590 10/01/2008 TESTA, HURWITZ & THIBEAULT, LLP HIGH STREET TOWER 125 HIGH STREET BOSTON, MA 02110				
EXAMINER				
CHAVIS, JOHN Q				
ART UNIT		PAPER NUMBER		
2193				
MAIL DATE		DELIVERY MODE		
10/01/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/647,193

Applicant(s)

FENLON ET AL.

Examiner

John Chavis

Art Unit

2193

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 16-37 is/are rejected.
- 7) ☒ Claim(s) 11-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date 8/22/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 28-34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The current focus of the Patent Office in regard to statutory inventions under 35 U.S.C. § 101 for method claims and claims that recite a judicial exception (software) is that the claimed invention recite a practical application. Practical application can be provided by a physical transformation or a useful, concrete and tangible result. No physical transformation is recited and additionally, the final result of claim 28 is merely software which is not a tangible result because nothing in either claim place the software in a statutory environment. There is nothing clearly specified in either claim that specifies a statutory environment in which the methods execute. The dependent claims do not cure the problems associated with its parent claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 8, 10, 16, 20-27 and 35-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Fenlon et al. (2004/0039728).

1. A method of monitoring a distributed application including one or more transactions on a network having an infrastructure (see the title and the abstract), the method comprising: generating a transactional path for one of the transactions (see sect. 0009), associating metrics relating to the network infrastructure with the transactional path (see the last 2 sentences of the abstract, sect. 0010 and claims 4-5 and 8-16), and providing information about the transaction to a user (see sects. 0012, 0023-0024, and 0041), based at least in part on the association between the transactional path and the metrics relating to the network infrastructure (see sects. 0012, 0023-0024, and 0041).

2. The method of claim 1, wherein the generating step comprises identifying software components of the transaction (see the threads in sect. 0047).

3. The method of claim 2, wherein the generating step comprises identifying dependencies between the software components of the transaction (see fig. 6, rule 454).

4. The method of claim 3, wherein the identifying dependencies step comprises unpacking and analyzing files that identify the software components of the transaction

(see step 352 of fig. 5 and 453-454 of fig. 6 in which threads, "portions of a program", are inherently unpacked and analyzed).

8. The method of claim 3, wherein the identifying dependencies step comprises analyzing the software components of the transaction to identify direct and indirect caller relationships between the software components of the transaction (see the spawned, "offspring/family or parent/child", processes in the table in the top left portion of page 9).

10. The method of claim 1, wherein the generating step comprises identifying infrastructure resources that may be used by the transaction (see sects. 0007 and 0009).

16. The method of claim 11, wherein the identifying dependencies step comprises unpacking and analyzing files that identify the software components of the transaction (the threads are considered to indicate that the components are unpacked and the path selections are considered to indicate that the unpacked components are analyzed).

20. The method of claim 1, wherein the providing information step comprises providing business relevant information about execution of the transaction to the user (see sects. 0002, 0011 and 0014-0015).

21. The method of claim 20, wherein the business relevant information includes a notification of the transaction taking more than a threshold time to execute (see sects. 0002, 0011 and 0014-0015).

22. The method of claim 20, wherein the business relevant information includes notification of infrastructure resources that may be used by the transaction being unavailable (see sects. 0002, 0011 and 0014-0015, note specifically performance and load information).

23. The method of claim 22, wherein the business relevant information includes notification of how unavailability of ones of the infrastructure resources that may be used by the transaction may effect performance of the transaction (see the cost information in the cited portions of claim 22).

24. The method of claim 20, wherein the business relevant information includes which of the one or more transactions may be effected by unavailability of ones of the infrastructure resources that may be used by the one or more transactions see the performance information in the cited portions of claim 20).

25. The method of claim 1, wherein the providing information step comprises displaying an observation message to the user based on the occurrence of a condition (see sect. 0018, 0041, 0050 and 0052).

26. The method of claim 25, wherein the observation message is user-defined (see the rejection of claim 25).

27. The method of claim 25, wherein the condition is user-defined (see the rejection of claim 25).

Claim 35 is rejected as claim 1 above.

In reference to claims 36-37, see the rejection of claims 25-27 and

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5-7, 9, 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fenlon et al., as specified above and further in view of the applicant's design choice of merely selecting a specific programming language and utilizing features that are inherent to the selected language .

5. The method of claim 4, wherein the files include an Enterprise Archive (EAR) file (Mercier does not teach the use of an EAR file; however, it would have been obvious to

a person having ordinary skill in the art at the time of the invention to select the specific files utilized that are utilized based on reusability and compatibility issues by merely selecting a programming language to use, such a Java, for the reasons specified above).

6. The method of claim 4, wherein the files include a Web Application Archive (WAR) file (see the rejection of claim 5).

7. The method of claim 4, wherein the files include an Enterprise Java Bean (EJB) Java Archive (JAR) file (see the rejection of claim 5).

9. The method of claim 8, wherein the analyzing software components step comprises decompiling the software components of the transaction (the features of claim 9 are not taught by Mercier. However, the features are known in the art to satisfy compatibility issues, such as translating intermediate code between virtual machines when the Java programming language is selected for use. Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to merely select a known method of enabling compatibility between communicating system as known in the art at the time of the invention and as merely mirroring the feature selected by the applicant for the same reasons specified above and specified by the applicant in sect. 0060, which enables decompiling if necessary by known methods).

17. The method of claim 16, wherein the files include an Enterprise Archive (EAR) file (see the rejection of claim 8).

18. The method of claim 16, wherein the files include a Web Application Archive (WAR) file (see the rejection of claim 8).

19. The method of claim 16, wherein the files include an Enterprise Java Bean (EJB) Java Archive (JAR) file (see the rejection of claim 8).

7. Claim 11-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Chavis whose telephone number is (571) 272-3720. The examiner can normally be reached on M-F, 9:00am-5:30pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis Bullock can be reached on (571) 272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JC/

/John Chavis/
Primary Examiner, Art Unit 2193